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U.S. HOUSE OF REPRESENTATIVES COMMITTEE ON WAYS AND MEANS

SUBCOMMITTEE ON SELECT REVENUE MEASURES

**6/8/12 Hearing on Framework for Evaluating Tax Extenders**

**Post-Hearing Written Committee submission**

**“Dramatic adverse paradigm shift”** for systemic economic recovery, investments, and jobs-creation—this is assuredly the certain unavoidable, undeniable, inescapable consequence which must follow the expiration of the tax-extendors or tax-expirers under consideration. This conclusion is drawn from 8 years’ experience as Counsel to the Cleveland Empowerment Zone (a \$200 million dollar program funded by HUD Section 108 loans, and EDI grants, and DOL workforce dollars and State of Ohio funds), and lead counsel for the City of Cleveland on 6-8 recent and pending New Markets Tax Credit (NMTC) transactions (total aggregate financing in excess of \$100 million). My message, my bias, is simple and straight-forward. Tax-tools under programs like EZ and NMTC are admittedly not fully goal-effective or cost-efficient; yet, they are moderately productive and, importantly, the only tools currently available or in-play. It would be not only counter-productive; but conclusive evidence of a coalescence of cowardice and hubris for Congress not to extend the useful lives of these vital tools. **Have I gained your attention?**

We are called, by virtue of our respective positions, experience, and intellect to engage in informed public discourse seeking diligent discernment of solutions for ongoing economic crises which are beyond vital and urgent—they are endemic and “end-gamic.” Are there any among us who would deny the portents of doom readily available from the most cursory consideration of the European Union, particularly Greece and Spain, or, domestically, a study of California and Michigan? Even the second-largest and only robust national economy, China, is now seeing a significant drop in growth. Leaders at all levels, national, state, and global lack the vision, the will and the courage to generate and implement effective recovery plans. Still, we must continue to do what little we can do and

have been doing. Clearly we need an exhaustive and comprehensive re-working of the Internal Revenue Code and world trade and markets; but those tasks are beyond our current scope. Unless and until presented with some viable, effective alternative tools, **we must extend the proven tools of NMTC and EZ and others.**

It is imperative that we recognize, address, confront, challenge, and ultimately discount, dismiss and abandon various accepted or conventional premises, predicates, assumptions, terms, concepts or notions, if we are to engage fully and productively. Simply and summarily stated: our national GDP is deceptively defined and is not growing but is stagnant, at best; reports and claims that our national unemployment is at or near 8.2% are dangerously deceptive; the accepted notion of equivalency of impact or treatment between tax credits and tax expenditures is, likewise, deceptive. **We must clarify our thoughts and analysis.**

By this, the fourth paragraph, most readers will uncomfortably wonder whether there will be any facts or data or application of metrics in support of the verbiage, asking “Am I merely indulging the ramblings and rantings of some rhetorician?” What is there to distinguish this diatribe from the exhortations or scoldings of politicians or candidates staring at their tele-prompters and guided by poll results? What indeed? I urge the Committee and interested readers to suspend disbelief a while longer.

Congress may readily confirm through OIG, GAO, IRS, HUD, and its own experiences that the process and tools for measurement, reporting and monitoring effectiveness of such programs are, generally, obtuse and susceptible of manipulation and misinterpretation, either unwitting or contrived.

**RE: EZ Program...**The Office of Inspector General (OIG) conducts one or more audits of a sampling of such programs and finds successfully completed projects, with jobs-creation for permitted uses; yet, challenges documentation. The Government Accountability Office (GAO) conducts repeated program reviews and issues reports acknowledging jobs creation, economic development and the apparent leveraging of significant private capital; yet, challenges causality. The Internal Revenue Service (IRS) asserts an inability or unwillingness to quantify and document the extent of utilization of the EZ employee-wage and other tax benefits. The Department of Housing and Urban Development (HUD) is fully engaged with proscriptive implementation efforts and unable to devote adequate resources to measurement and monitoring despite an overly complex self-reporting Performance Measurement tool (PERMS). There are performance and process deficiencies in the EZ program. Still, in the Cleveland EZ, with a beneficial focus on the EZ communities and community based development organizations, over the past decade and a half, permitted-use projects generated almost 4,000 new jobs, plus an unreported number of construction jobs, provided employment training for over 5,000 low-income residents of EZ, and leveraged over \$350 million of private capital—all at a cost of \$87 million in EDI grants and loans of \$87 million in HUD Section 108 funds and a DOL Grant of \$20 million.

**RE: NMTC Program...**Banks, developers, qualified entities and communities have recognized so much value in this program that the available allocations (\$3.5 billion for 2011) have been over-applied-for by a factor of 10X. A sound argument can be advanced that the Community

Development Financial Institutions (CDFI) Fund should be authorized to expand the program and award more allocations. The NMTC program generates investment, economic development, and jobs creation in targeted low-income communities (like the local EZ); yet, the financing structure is unduly complicated and the credits all flow primarily to banks with moderate “leakage” of fees and costs to CDE’s, counsel and accountants. There are performance and process deficiencies in the NMTC program. Still, in Cleveland, in the past decade there have been eight or more projects, for an aggregate of over \$100 million which would not have happened without the NMTC component.

Respectfully, any real or perceived deficiencies in performance or process or measurement should not be deemed adequate to impel the expiration of these unique and vital jobs-creation programs.

Current economic realities support my respectful request that the committee recommend not only extension of the current deadlines for these tax credits but, also, significant expanded funding and greatly expanding geographic application for both. Since 2007 it has become evident beyond argument that virtually all neighborhoods and communities of virtually every mid to large size urban area are in great survival-need of even marginally effective economic development and jobs-creation tools and programs. While there are undoubtedly some few enclaves of affluence in a few major metropolitan areas—the great majority of zip codes need help desperately. They need EZ grants and loans and bonds and credits and they need NMTC credits if they are to have any chance of generating development and construction in the current economic realities.

Repeated annual threats to change or eliminate the EZ program and those like it disrupt the economy and worse introduce UNCERTAINTY into economic planning and decision making. UNCERTAINTY is perhaps the most insidious enemy of economic growth because it paralyzes entrepreneurs and community leaders, freezing most new ideas and programs and initiatives. What we don’t see, and we don’t see the effects of UNCERTAINTY, we cannot measure and therefore it is like it does not exist. However, that great unheralded economist Anna Schwartz who passed away yesterday gave an interview when she was about 93 and testified that the Federal Reserve should not be worried about liquidity so much as about UNCERTAINTY for it is UNCERTAINTY which reduces economic activity and growth and is inimical to the American way.

Her qualifications? With another somewhat more heralded economist named Milton Friedman, she authored The Economic History of Money. She did, I believe, recognize the nudity of emperors like Greenspan and Bernanke.